

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b>				1. REQUISITION NUMBER 7/470-1087		PAGE OF PAGES 1 25	
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30							
2. CONTRACT NUMBER		3. AWARD/EFF. DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER 53SBNB760140	
7. FOR SOLICITATION INFORMATION CALL -->		a. NAME Romana R. Moy		b. TELEPHONE NUMBER (No Collect Calls) (301) 975-4999		8. OFFER DUE DATE/LOCAL TIME 05/21/97 3:00 PM local	
9. ISSUED BY CODE		10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED <input checked="" type="checkbox"/> SET ASIDE: 100.00 % FOR <input checked="" type="checkbox"/> SMALL BUSINESSES <input type="checkbox"/> SMALL DISADV. BUSINESSES <input type="checkbox"/> 8(A) SIC: 8111 FSC: SIZE STANDARD: \$5.0 million		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE <input checked="" type="checkbox"/> 13a. THIS CONTRACT RATED ORDER UNDER DPAS (15 CFR 700)		12. DISCOUNT TERMS	
NAT'L INSTITUTE OF STANDARDS & TECH ACQUISITION & ASSISTANCE DIVISION BUILDING 301, ROOM B117 GAITHERSBURG, MD 20899-0001				13b. RATING NS		14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
15. DELIVER TO CODE 0 NATL INSTITUTE OF STANDARDS & TECH BUILDING 301, RECEIVING ROOM ROUTE 270 AND QUINCE ORCHARD ROAD GAITHERSBURG, MD 20899-0001				16. ADMINISTERED BY CODE NATL INSTITUTE OF STANDARDS & TECH ACQUISITION AND ASSISTANCE DIV BUILDING 301, ROOM B117 GAITHERSBURG, MD 20899-0001			
17a. CONTRACTOR/OFFEROR CODE				18a. PAYMENT WILL BE MADE BY CODE NAT'L INSTITUTE OF STANDARDS & TECH ACCOUNTS PAYABLE OFFICE BUILDING 101, ROOM A825 GAITHERSBURG, MD 20899-0001			
FACILITY CODE				TELEPHONE NO.			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				18b. SUBMIT INVOICE TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
0001	"Patent and Optional Literature Search in Support of the National Institute of Standards & Technology & the Advanced Technology Program's (ATP) 97-02, 97-04, and 97-07 Focused Program" in accordance with the following Statement of Work.  NOTE: The proposed hourly labor rate(s) of the employee(s) designated to provide support  (Attach Additional Sheets as Necessary)			250	HRS		
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For Govt Use Only)			
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. 52.212-3 AND 52.212-5 ARE ATTACHED. <input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. 52.212-5 IS ATTACHED.				ADDENDA <input type="checkbox"/> ARE <input checked="" type="checkbox"/> ARE NOT ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				29. AWARD OF CONTRACT: REFERENCE _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5) INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS: _____			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)		31c. DATE SIGNED	
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, ACCEPT AS NOTED				33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		34. VOUCHER NUMBER	
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE		32c. DATE		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER	
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		42a. RECEIVED BY (Print)		40. PAID BY	
				42b. RECEIVED AT (Location)			
				42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS	

ORDER FOR SUPPLIES AND SERVICES SCHEDULE - CONTINUATION	PAGE NO. 2
--	---------------

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER	CONTRACT NO.	ORDER NO.
---------------	--------------	-----------

ITEM NO. (19)	SUPPLIES OR SERVICES (20)	QUANTITY ORDERED (21)	UNIT (22)	UNIT PRICE (23)	AMOUNT (24)	QUANTITY ACCEPTED
.	<p>services for this requirement shall include wages, benefits, overhead, G&amp;A, and profit.</p> <p>The Contractor shall provide a listing of all employee(s) that are proposed to directly support this requirement in accordance with the Statement of Work.</p> <p>NOTE: THIS REQUIREMENT IS NOT A CONSIDERED A COMMERCIAL SERVICE REQUIREMENT IN ACCORDANCE WITH FEDERAL ACQUISITION REGULATION (FAR) PART 12.</p>					
PAGE TOTAL -->						

# TABLE OF CONTENTS

PAGE

SF1449 FORM . . . . .	1
ADDENDA . . . . .	2
A.1 PERIOD OF PERFORMANCE . . . . .	2
A.2 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) . . . . .	2
A.3 ORGANIZATIONAL CONFLICT OF INTEREST . . . . .	2
A.4 STATEMENT OF WORK . . . . .	4
CONTRACT CLAUSES . . . . .	8
B.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988) . . . . .	8
B.2 52.222-35 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984) (DEVIATION) . . . . .	8
B.3 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984) . . . . .	12
CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS . . . . .	13
C.1 Attachments . . . . .	13
SOLICITATION PROVISIONS . . . . .	14
D.1 1352.233-2 SERVICE OF PROTESTS (DEVIATION FAR 52.233-2) (AUG 1996) . . . . .	14
D.2 DEPARTMENT OF COMMERCE AGENCY-LEVEL PROTEST PROCEDURES LEVEL ABOVE THE CONTRACTING OFFICER (DEC 1996) . . . . .	14
D.3 REGULATORY NOTICE . . . . .	18
D.4 INQUIRIES . . . . .	18
D.5 AMENDMENTS TO PROPOSALS . . . . .	18
D.6 AWARD . . . . .	19
D.7 52.204-3 TAXPAYER IDENTIFICATION (MAR 1994) . . . . .	20
D.8 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (JAN 1997) . . . . .	21
D.9 52.222-21 CERTIFICATION OF NONSEGREGATED FACILITIES (APR 1984) . . . . .	23
D.10 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984) . . . . .	24
D.11 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984) . . . . .	25

## ADDENDA

### A.1 PERIOD OF PERFORMANCE

The period of performance of this contract is from MAY 28, 1997 through JULY 30, 1997.

### A.2 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

- (a) (TO BE DETERMINED UPON AWARD), is hereby designated as the Contracting Officer's Technical Representative. The COTR may be changed at any time by the Government without prior notice to the contractor but notification of the change, including the name and address of the successor COTR, will be promptly provided to the Contractor by the Contracting Officer in writing. The COTR is located at the U.S. Department of Commerce, . His telephone number is Area Code .
- (b) The responsibilities and limitations of the COTR are as follows:
- (1) The Contracting Officer's Technical Representative is responsible for the technical aspects of the project and technical liaison with the Contractor. The COTR is also responsible for the final inspection and acceptance of all reports, and such other responsibilities as may be specified in the contract.
  - (2) The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the Contract price, terms or conditions. Any Contractor request for changes shall be referred to the Contracting Officer directly or through the COTR. No such changes shall be made without the expressed prior authorization of the Contracting Officer. The COTR may designate assistant COTR(s) to act for him by naming such assistant in writing and transmitting a copy of such designation through the Contracting Officer to the Contractor.

### A.3 ORGANIZATIONAL CONFLICT OF INTEREST

- (a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that

A.3 (Continued)

the Contractor has disclosed all such relevant information.

- (b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.
- (c) Remedies - The Contracting Officer may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.
- (d) The Contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including this paragraph (d), in any subcontract or consultant agreement hereunder.

#### A.4 STATEMENT OF WORK

##### LITERATURE SEARCH FOR THE ATP 97-02, 97-04, AND 97-07 FOCUSED PROGRAMS

###### 1) Background

Begun in 1990, the Advanced Technology Program (ATP) at the National Institute of Standards and Technology invests directly in the nation's economic growth by awarding cooperative agreements to U.S. companies and joint ventures to develop innovative technologies with strong commercial potential--technologies which, if successful, would enable novel or greatly improved products and services for the world marketplace.

The ATP concentrates on promising, but high-risk, enabling technologies that can form the basis for new and improved products, manufacturing processes, and services. It accelerates technologies that, because they are risky, are unlikely to be developed in time to compete in rapidly changing world markets without such a partnership of industry and government. It does not fund product development.

###### 2) ATP Competitions

The ATP conducts competitions to select R&D projects for support. Only project proposals submitted in response to a formal competition are considered. (Competitions are announced in the Federal Register, the Commerce Business Daily, the Internet at <http://www.atp.nist.gov> and by direct mail, among other channels.)

Projects are evaluated against a list of criteria, including:

- \* the scientific and technical merit of the proposal,
- \* the potential for broad-based economic benefits to the United States,
- \* the quality of the proposer's plan for eventual commercialization of the technology--the ATP does not fund product development, but the proposer should have plans for capitalizing on a successful project,
- \* the level of commitment of the proposal and the adequacy of their organizational structure, and
- \* the experience and qualifications of the proposer.

Since 1994, the bulk of ATP funding has been applied to focused program areas, multi-year efforts of approximately \$20 million to \$50 million per year, targeted at specific, well-defined

#### A.4 (Continued)

technology and business goals. Often, these involve the parallel development of a suite of synergistic R&D projects. By managing groups of projects that complement and reinforce each other, the ATP can have the greatest possible impact on technology and the economy.

In addition to focused project competitions, which are open only to projects within a specified technical scope, the ATP sponsors at least one "general" competition each year, open to all technology areas. Past general competition awards have covered a broad spectrum of technologies in agriculture, biotechnology, microelectronics and electronics manufacturing, machine tools, advanced automotive manufacturing, advanced materials, information and communications technology, chemical processing, and other areas.

The ATP is currently running three (3) focused program competitions and wishes to develop a better understanding of the current prior art for all proposals selected as semi-finalists. To this end, the ATP is commissioning a service that will provide this type of information.

##### 3) Purpose of the Service

The ATP wishes to develop a better understanding of the currently existing technology of the proposals that will ultimately be funded. Knowledge about current prior art also provides ATP an additional data point to formulate questions for the oral reviews and therefore aid in making more informed decisions during the final selection process. In addition, performing these searches places the ATP in a better position to evaluate the risk versus feasibility of the proposed technology.

##### 4) Scope of Work

###### Focused Programs:

- A) 97-02 "Motor Vehicle Manufacturing"
- B) 97-04 "Digital Data Storage"
- C) 97-07 "Tissue Engineering"

For each of the above listed focused programs, the selected contractor shall provide the ATP with the following support services:

- A) A prior art search and optional literature search, where such is indicated and can be done within the budgetary and time constraints, in the area of technology with which each submission is concerned to identify the closest and most relevant prior art.

A.4 (Continued)

B) Identification of similar and/or alternative (or competing) technologies.

C) Identification of dominating patents affecting freedom to operate.

D) A report that will include the above information with a brief summary of the focus of the identified prior art including a description of the major differences. ATP will specify the required format of the report at a later date.

E) A copy of the pertinent patents and articles obtained from the literature search.

To avoid potential conflict-of-interest issues, the selected contractor will initially be provided with a list of the companies selected as semi-finalists to verify whether any of the companies are current clients of the contractor. If a company is identified as a current client, then the proposal(s) submitted by that company will be handled by the ATP or another contractor.

To perform the requested search, the ATP will provide the contractor with a copy of the technical portion of the selected proposals along with a description of the main technical focus of the project. Also, the ATP technical sponsors will be available to answer technical questions and thus aid the contractor in the prior art search. A list of the ATP sponsors names and assigned proposals will be provided to the contractor at a later date.

5) Evaluation Criteria

The following criteria will be used for proposal evaluation purposes:

A) The Contractor shall be able perform searches using experienced, technically trained individuals and those searches should be of high quality.

B) The Contractor shall be able to meet the following schedule:

Competition	Selection of Semi-Finalist	Start of Oral Reviews
97-02	June 2-13, 1997	June 16, 1997
97-04	June 23, 1997	July 7, 1997
97-07	July 15, 1997	July 28, 1997

\* Approximately for 50 candidates may be selected from

A.4 (Continued)

each competition.

- \* Semi-finalists proposals will be submitted to the selected contractor for search purposes by June 13, 1997 for 97-02, June 24, 1997 for 97-04, and July 16, 1997 for 97-07.
- \* The selected contractor shall provide to the ATP a copy of the material uncovered in the literature search on each proposal no later than one (1) week prior to its scheduled oral date.

6) A NIST non-disclosure agreement shall be signed by all Contractor individuals who will be involved in the details of the required search, or anyone else who otherwise has access to the ATP proposals provided by NIST.

## CONTRACT CLAUSES

### B.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

#### I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

NUMBER	TITLE	DATE
52.222-3	CONVICT LABOR	AUG 1996
52.222-26	EQUAL OPPORTUNITY	APR 1984
52.222-36	AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS	APR 1984
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA	JAN 1988
52.225-11	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	OCT 1996
52.232-1	PAYMENTS	APR 1984
52.232-7	PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS	FEB 1997
52.232-8	DISCOUNTS FOR PROMPT PAYMENT	MAY 1997
52.232-11	EXTRAS	APR 1984
52.232-25	PROMPT PAYMENT	MAY 1997
52.233-1	DISPUTES	OCT 1995
52.233-3	PROTEST AFTER AWARD	AUG 1996
52.242-15	STOP-WORK ORDER	AUG 1989
52.242-17	GOVERNMENT DELAY OF WORK	APR 1984
52.243-3	CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS	AUG 1987
52.246-6	INSPECTION - TIME-AND-MATERIAL AND LABOR-HOUR	JAN 1986
52.249-6	TERMINATION (COST-REIMBURSEMENT) Alternate IV (SEP 1996)	SEP 1996
52.249-8	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)	APR 1984
52.253-1	COMPUTER GENERATED FORMS	JAN 1991

### B.2 52.222-35 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984) (DEVIATION)

#### (a) Definitions.

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto

B.2 (Continued)

Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause-

- (1) Includes, but is not limited to, openings that occur in jobs categorized as-
    - (i) Production and nonproduction;
    - (ii) Plant and office;
    - (iii) Laborers and mechanics;
    - (iv) Supervisory and nonsupervisory;
    - (v) Technical; and
    - (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and
  - (2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.
- (b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their

B.2 (Continued)

disability or veterans' status in all employment practices such as-

- (i) Employment;
  - (ii) Upgrading;
  - (iii) Demotion or transfer;
  - (iv) Recruitment;
  - (v) Advertising;
  - (vi) Layoff or termination;
  - (vii) Rates of pay or other forms of compensation; and
  - (viii) Selection for training, including apprenticeship
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.
- (c) Listing openings. (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.
- (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
- (3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

B.2 (Continued)

- (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.
- (d) Applicability. (1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
  - (2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.
- (e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.
  - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.
  - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and

B.2 (Continued)

is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

- (f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

B.3 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS

C.1 Attachments

Attachment No. 01 - ADVANCED TECHNOLOGY PROGRAM NON-DISCLOSURE AGREEMENT, 1 page.

Attachment No. 02 - ATP Focused Program Competition 97-02, MOTOR VEHICLE MANUFACTURING, February 1997, pages.

Attachment No. 03 - ATP Focused Program Competition 97-04, DIGITAL DATA STORAGE, February 1997, 19 pages.

Attachment No. 04 - ATP Focused Program Competition 97-07, TISSUE ENGINEERING, February 1997, 49 pages.

NOTE: The above attachments are not accessible through the Internet; however, they are available as a hard copy mailing package.

## SOLICITATION PROVISIONS

### D.1 1352.233-2 SERVICE OF PROTESTS (DEVIATION FAR 52.233-2) (AUG 1996)

- (a) Protests, as defined in Section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY  
ACQUISITION AND ASSISTANCE DIVISION  
BUILDING 301, ROOM B117  
GAITHERSBURG, MD 20899-0001  
ATTN: JOAN M. SMITH

- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

### D.2 DEPARTMENT OF COMMERCE AGENCY-LEVEL PROTEST PROCEDURES LEVEL ABOVE THE CONTRACTING OFFICER (DEC 1996)

I. PURPOSE: To implement the requirements of Executive Order No. 12979 and Federal Acquisition Regulation (FAR 33.103).

On October 25, 1995, President Clinton signed Executive Order No. 12979 which directs heads of executive agencies to develop administrative procedures for resolving protests to awards of procurement contracts within their agencies at a level above the contracting officer. Authority to administer procurement-related directives has been delegated within the Department of Commerce through the Chief Financial Officer and Assistant Secretary for Administration to the Director for Acquisition Management (Procurement Executive).

The Department's goal is to encourage protesters to resolve their protests at the agency level, help build confidence in the Government's acquisition system, and reduce protests to the General Accounting Office and other external fora. Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions. If concerns cannot be resolved, protesters may use these procedures when a resolution is requested from the agency at a level above the contracting officer.

#### II. DEFINITIONS:

D.2 (Continued)

An agency protest is one that may be filed with either the contracting officer or the protest decision authority but not both. When a protester decides to file a protest at the agency level with the protest decision authority, the guidelines set forth in these established agency level protest procedures above the contracting officer apply. These procedures are in addition to the existing protest procedures contained in the Federal Acquisition Regulation (FAR) Part 33.102. A day is a calendar day. In computing a period of time for the purpose of these procedures, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the Washington, DC offices of the Department of Commerce are closed for all or part of the last day, the period extends to the next day on which the Department is open.

III. PROCEDURES:

- a. Protesters using these procedures may protest to the protest decision authority who will make the final decision for the Department. Protests shall be addressed to:

Mr. Jorge R. Urrutia  
Director of Administration  
National Institute of Standards and Technology  
Building 101, Room A1105  
Gaithersburg, Maryland 20899  
FAX No. 301-926-7203

The outside of the envelope or beginning of the FAX transmission must be marked "Agency-level Protest". The protester shall also provide a copy of the protest within 1 day to the responsible contracting officer and a copy to the addressee indicated below:

Contract Law Division  
Office of the Assistant General Counsel for Finance and  
Litigation  
Department of Commerce, Room H5882  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230  
(FAX Number 202-482-5858)

- b. Election of forum: While a protest is pending at the agency level with the protest decision authority, the protester agrees not to protest to the General Accounting Office (GAO) or any other external fora. If the protester has already filed with the GAO or other external fora, the procedures described here may not be used.

D.2 (Continued)

1. Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protester was given the opportunity to be debriefed, whichever date is later. In cases other than those covered in the preceding two sentences, protests shall be filed not later than 10 days after the basis of the protest is known or should have been known, whichever is earlier.
2. To be filed on a given day, protests must be received by 4:30 PM current local time. Any protests received after that time will be considered to be filed on the next day. Incomplete submissions will not be considered filed until all information is provided.
3. To be complete, protests must contain the following information:
  - (i) the protester's name, address, telephone number, and fax number
  - (ii) the solicitation or contract number, name of contracting office and the contracting officer
  - (iii) a detailed statement of all factual and legal grounds for protests, and an explanation of how the protester was prejudiced
  - (iv) copies of relevant documents supporting protester's statement
  - (v) a request for ruling by the agency
  - (vi) statement as to form of relief requested
  - (vii) all information establishing that the protester is an interested party for the purpose of filing a protest
  - (viii) all information establishing the timeliness of the protest.

All protests must be signed by an authorized representative of the protester.

Within 14 days after the protest is filed, the

D.2 (Continued)

contracting officer will prepare an administrative report that responds to the issues raised by the protester and addresses any other issues, which, even if not raised by the protester, have been identified by agency officials as being relevant to the fairness of the procurement process. For good cause shown, the protest decision authority may grant an extension of time for filing the administrative report and for issuing the written decision. When an extension is granted, the protest decision authority will notify the protester and all interested parties within 1 day of the decision to grant the extension.

Unless an extension is granted, the protest decision authority will issue a decision within 35 days of the protest. The protest decision authority's final decision will be binding on the Department of Commerce and not subject to further appeals.

The protest decision authority shall send a written ruling and a summary of the reasons supporting the ruling to the protester by certified mail, return receipt requested with information copies to the applicable contracting office and Office of Acquisition Management.

Effect of protest on award and performance:

When a protest is filed prior to award, a contract may not be awarded unless authorized by the Head of the Contracting Activity (HCA) based on a written finding that:

- (i) the supplies or services are urgently required,
- (ii) delivery or performance would be unduly delayed by failure to make the award promptly, or
- (iii) a prompt award will be in the best interest of the Government.

When a protest is filed within 10 days after contract award or 5 days after a debriefing date was offered to the protester under a timely debriefing request in accordance with FAR 15.1004, whichever is later, the contracting officer shall immediately suspend performance pending the resolution of the protest within the agency, including any review by an independent higher official, unless continued performance is justified. The HCA may authorize contract performance, notwithstanding the protest, based on a written finding that:

D.2 (Continued)

- (i) contract performance would be in the best interest of the United States, or
- (ii) urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

IV. REMEDIES:

The protest decision authority may grant one or more of the following remedies:

- (1) terminate the contract,
- (2) re-compete the requirement,
- (3) issue a new solicitation,
- (4) refrain from exercising options under the contract,
- (5) award a contract consistent with statutes and regulations,
- (6) amend the solicitation provisions which gave rise to the protest and continue with the procurement,
- (7) such other remedies as the decision-maker may determine are necessary to correct a defect. Designated Protest Decision Authority for Operating Unit as follows:

D.3 REGULATORY NOTICE

Offerors are advised that certain provisions and clauses identified with a Commerce Acquisition Regulation (CAR) notation for identification purposes, have not yet been incorporated into the CAR. However, all of these items are binding for this acquisition and will eventually be contained in the CAR at Part 13 of Title 48 of the Code of Federal Regulations.

D.4 INQUIRIES

Inquiries and all correspondence concerning this solicitation document should be submitted in writing to the issuing office. OFFERORS ARE INSTRUCTED SPECIFICALLY TO CONTACT ONLY THE PERSON CITED IN BLOCK 7 OF STANDARD FORM (SF) 1449 ABOUT ANY ASPECT OF THIS REQUIREMENT PRIOR TO CONTRACT AWARD.

D.5 AMENDMENTS TO PROPOSALS

D.5 (Continued)

Any changes to a proposal made by the offeror after its initial submittal shall be accomplished by replacement pages. Changes from the original page shall be indicated on the outside margin by vertical lines adjacent to the change. The offeror shall include the date of the amendment at the bottom of the changed pages.

D.6 AWARD

Award of this requirement will be made to that Contractor who submits a quote which technically meets the requirements of the Statement of Work and the lowest price.

(a) Definitions.

"Common parent," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

- (b) All offerors are required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to the reporting requirements described in FAR 4.903, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) Taxpayer Identification Number (TIN).

☐ TIN:\_\_\_\_\_.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis.\_\_\_\_\_

D.7 (Continued)

(d) Corporate Status.

- ☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;
- ☐ Other corporate entity;
- ☐ Not a corporate entity:
  - ☐ Sole proprietorship
  - ☐ Partnership
  - ☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(e) Common Parent.

- ☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.
- ☐ Name and TIN of common parent:
  - Name \_\_\_\_\_
  - TIN \_\_\_\_\_

D.8 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS  
(JAN 1997)

- (a)
  - (1) The standard industrial classification (SIC) code for this acquisition is 8111.
  - (2) The small business size standard is no more than .
  - (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (b) Representations.
  - (1) The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.
  - (2) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a small disadvantaged business concern.

- (3) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it [ ] is, [ ] is not a women-owned small business concern.

- (c) Definitions. "Joint venture," for purposes of a small disadvantaged business (SDB) set-aside or price evaluation preference (as prescribed at 13 CFR 124.321), is a concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more business concerns and is considered to be affiliated for size purposes with such other concern(s). The combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract. The majority of the venture's earnings must accrue directly to the socially and economically disadvantaged individuals in the SDB concern(s) in the joint venture. The percentage of the ownership involvement in a joint venture by disadvantaged individuals must be at least 51 percent.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

"Small disadvantaged business concern," as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR part 124.

"Women-owned small business concern", as used in this provision, means a small business concern--

D.8 (Continued)

- (1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
  - (2) Whose management and daily business operations are controlled by one or more women.
- (d) Notice. (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.
- (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small or small disadvantaged business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--
- (i) Be punished by imposition of a fine, imprisonment, or both;
  - (ii) Be subject to administrative remedies, including suspension and debarment; and
  - (iii) Be ineligible for participation in programs conducted under the authority of the Act.

D.9 52.222-21 CERTIFICATION OF NONSEGREGATED FACILITIES  
(APR 1984)

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.
- (b) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where

D.9 (Continued)

segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

- (c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will--
- (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
  - (2) Retain the certifications in the files; and
  - (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

D.10 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS  
(APR 1984)

The offeror represents that--

- (a) It [ ] has, [ ] has not participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;
- (b) It [ ] has, [ ] has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

D.11 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The offeror represents that (a) it [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

CERTIFICATION

I hereby certify that the responses to the above Representations, Certifications, and other statements (identified in Subsections D.7 through D.11) are accurate and complete.

Signature:

Title:

Date: